The Solicitors' Journal

VOL. LXXXVI. **Saturday, February 14, 1942.** No. 7

Editorial, Publishing and Advertisement Offices: 29–31, Breams Buildings, London, E.C.4. Telephone: Holborn 1403.
SUBSCRIPTIONS: Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.
Annual Subscription: £3, *post free*, payable yearly, half-yearly, or quarterly, in advance. *Single Copy:* 1s. 4d., *post free.*
CONTRIBUTIONS: Contributions are cordially invited, and must be accompanied by the name and address of the author (not necessarily for publication) and be addressed to The Editor at the above address.
ADVERTISEMENTS: Advertisements must be received not later than first post Tuesday, and be addressed to The Manager at the above address.

Current Topics.

Sir Joseph Chitty.

SIR JOSEPH CHITTY died on 6th February, at the age of eighty-one, having been a Master of the Chancery Division from 1910 to 1932 and Chief Master from 1932 to 1936. He bore a name which is well known to every lawyer. The editor of "Chitty's Statutes" was his great-grandfather, his grandfather was THOMAS CHITTY, the famous pleader, and his father was Lord Justice CHITTY. He was a great-nephew of the author of "Chitty on Contracts," and a cousin of Sir THOMAS WILLES CHITTY, K.C., the authority on practice and procedure in the Supreme Court and author of "Chitty's King's Bench Forms." It is of particular interest to solicitors that Sir JOSEPH was admitted a solicitor in 1887 and was actually a partner in the firm of Tomlin & Chitty, of Old Burlington Street, when he was appointed as a Master of the Supreme Court. He was for many years an examiner for The Law Society. Like other members of the family from which he came, he bore aloft all that was best in the traditions of the legal profession and of the high office which he occupied with such rare distinction.

Paper Saving and Costs.

ONCE again a stern warning to economise in paper has come from high authority, this time from the Court of Appeal. The Master of the Rolls, on 5th February, referred to letters which had been put before him, and which, he said, were quite unnecessary to the case which the court was considering. Instructions, he said, were issued a very long time ago to which a great deal of publicity was given with regard to the waste of paper. It must be clearly understood, he concluded, that breach of these instructions with regard to the saving of paper on correspondence would entail the consequence that solicitors would in future be made to bear the costs personally. The instructions to which his lordship was referring were issued above his signature on 8th April, 1941 (85 SOL. J. 188, 218). It will be remembered that they enjoined the use of both sides of the paper in making copies of correspondence and other documents, and that the practice of using one sheet of paper for each letter should be discontinued. Letters, it was stated, should be typed continuously, with a break or line between them. Copies of documentary evidence and transcripts of shorthand notes must be strictly confined to the issue of fact which is involved and Ord. 58, r. 11, must be rigorously observed. It will be recalled also that directions already given [1939] W.N. 347, were then reissued by way of reminder. These provided that only one copy of the typewritten documents lodged need be a top copy and the rest could be carbon copies, and that in the case of lengthy documents only one copy of the whole document should be lodged and three copies of the relevant extracts, with, where necessary, concise summaries of the document. Copies of correspondence, it was also stated, should include only those letters which were read or referred to in the court below. Thus solicitors can be in little doubt as to the proper course of paper saving in the Court of Appeal. Some of the rules which are not peculiar to the Court of Appeal will, no doubt, be followed in the High Court and lower courts, but it would certainly be an advantage to both the profession and the public if definite emergency rules of court were made with regard to the other courts. Meanwhile solicitors will, no doubt, be as wide awake as other sections of the community to further methods of paper economy. In Wirral 20,000 volumes were surrendered in January under a scheme for collecting a mile of books, which eventually grew to 2¼ miles, and yielded seven tons of paper. It is to be hoped that solicitors played their part in this noble effort by bringing forth their out-of-date text-books, digests and diaries. Solicitors can, indeed, make an enormous contribution to the war effort by periodically turning out all their unwanted paper.

Landlord and Tenant (Requisitioned Land) Bill.

ON the committee stage of the Landlord and Tenant (Requisitioned Land) Bill in the Commons on 4th February, Mr. ROSTRON DUCKWORTH moved an amendment to cl. 1 so as to give power to disclaim on requisitioning to leaseholders who have temporarily vacated their premises, a right which is given by cl. 1 to occupying tenants. The Solicitor-General stated that he was sorry that the amendment could not be accepted. The scales had to be held evenly and fairly as between landlord and tenant, and landlords were not all rich people. The Bill followed the lines of Mr. MORRIS'S report, and limited the matter to the small class of cases where there was special hardship. The amendment was then by leave withdrawn. A number of drafting amendments in the name of Mr. SPENS were welcomed and accepted by the Solicitor-General. He stated that they had their origin largely in the fact that The Law Society had gone carefully through the Bill and had got in touch, on the suggestion of the Solicitor-General, with the Parliamentary draftsman. Two new clauses were also given their first and second readings and added to the Bill. The object of the first, which was moved by the Solicitor-General, was to deal with the case where a requisitioning took place piecemeal. At any one time it might not be possible to say that the conditions for disclaimer were present. The new clause enabled the court to put the matter right in a proper case. The second new clause, which was moved by Mr. SPENS, covered the case where a tenant was abroad at the time the requisitioning notice was served, or was about to go abroad, leaving his family in his home or a manager in charge of his business. It was thought likely that he would be ignorant of the option afforded him by the Bill and therefore would not be able to exercise it in the requisite time. Under the new clause, arrangements were made for the tenant to be given a further opportunity when he returned of taking advantage of the Bill. The clause provides that the tenant may apply to the court within a reasonable time after his return to the United Kingdom, or where the tenant remains abroad, the court may authorise a proper person to exercise the rights on behalf of the tenant. The Solicitor-General accepted the new clause as a real improvement. The Bill was reported, with amendments.

The Pre-War Trade Practices Bill.

IN moving that the Pre-War Trade Practices Bill be read a second time on 3rd February in the Commons, the Minister of Labour said that the Bill followed a precedent established in 1919, but that at the outbreak of this war we had the advantage that there had been established a National Joint Advisory Council. In addition, there had grown up a responsible employers' organisation in the British Employers' Confederation, and the Trades Union Congress had also been endowed with wider powers. The Bill had been drafted with the aid of and in consultation with the two organised forces in industry in this country. It was most remarkable that the change over from a peace-time to a war-time footing had been made with scarcely a single dispute on the question of dilution. Nearly every trade practice which had been devised to protect the workman had been the result of years of effort and might be described as a real property right so far as the working classes were concerned. Owing to the greater development of mechanisation and the consequent spread of craftsmanship, changes of practice had now to be carried out over a wider field. The Bill was introduced not only to carry out an honourable pledge, but also to minimise the chances of dispute in the difficult transition from war to peace. The parties would not be dragged into the courts in the first instance, but the courts would come in only if an employer refused to carry out an award. The Bill was concerned not with wages, but with rules, practices, customs, conditions of work and employment and hours. Clause 1 obliged employers to

restore trade practices which had been departed from during the war and to maintain the restored trade practices for eighteen months, and it applied equally to employers in undertakings which had been established during the war. Provision was made to enable the unions to agree to a modification or waiver of the obligations, but only a union whose custom it was before the war to maintain the practice in question could enter into such an agreement. Clauses 3 and 4 provided for the settlement of any question whether or not employers had discharged their obligation. Any such question might be reported to the Minister by an employees' organisation of a trade union, and if it could not be disposed of by conciliation, it must be referred to arbitration. If then the award or decision was not carried out, the employer was liable to penalties. The remaining clauses of the Bill dealt with the powers and duties of the arbitration tribunals and the position of undertakings carried on by the Crown and by local authorities. The tribunals would consist of lawyers as chairmen, assisted by panels of assessors from each side, and they would give decisions which would be final and binding. Mr. ELLIS SMITH welcomed the Bill, but only as an instalment of goodwill. He recalled that the Act of 1919 gave few benefits to the workers, and contrasted the willing surrender of their rights by workers in this war with the serious labour trouble resulting from dilution in the last war. He suggested that the maximum fine for employers failing in their obligation was infinitesimal, and might encourage breach. Mr. AUSTIN HOPKINSON moved an amendment rejecting the Bill on the ground that it would increase costs at a time when decreased costs were necessary in order to avoid serious unemployment. In the absence of a seconder, the amendment fell to the ground. After further debate the Bill was read a second time.

The Press and Local Authorities.

ON 28th January the Institute of Journalists sent a deputation to the Minister of Health to request his co-operation to remove or ameliorate the disabilities from which Press and public alike are suffering because of the varying interpretation of existing legislation governing the admission of the Press to meetings of local authorities. The deputation made strong objection to the procedure whereby a local authority contrived to evade publicity for its proceedings by constituting itself as a committee. The deputation spoke from personal experience of the attempts to evade the intent of Parliament as expressed in the 1908 and 1933 Acts and submitted examples of the tendency, both under pre-war and war-time conditions, to secrecy in local government administration. The Minister was also told of the new and serious situation arising out of the recent decision in *De Buse and Others* v. *McCarty and Others*, 85 SOL. J. 468. As a result of that decision, it was said, local authorities in many areas were withholding in advance copies of committee reports and minutes from the newspapers, and Press and public alike were greatly handicapped. The Minister replied that he was most anxious that no privileges should be withdrawn from the Press except on grounds of national security, and he expressed the opinion that that was the view held by the vast majority of local authorities. He knew that associations of local authorities had the whole matter under review, and they were in the best position to know the extent of the difficulties that might have arisen. He would wish to confer with those associations as to the desirability of bringing material considerations to the notice of the local authorities, and about the material means of doing anything that might appear necessary to that end. It is difficult to resist the criticism that there is a certain amount of studied vagueness in the Minister's reply, and further particulars will no doubt be sought and given at a later stage. If there is no national interest preventing Parliament from transacting its main business in public, there is an *a fortiori* case for publicity in respect of the work of local authorities, which, in a sense, comes closer to our daily lives. Judging from correspondence in the Press, to which we referred in a previous topic on this subject (85 SOL. J. 353), there seems to be general agreement that the time is now ripe for the amendment of s. 75 and para. 4 of Pt. V of Sched. III of the Local Government Act, 1933, by which local authorities may regulate their proceedings by standing orders, and by which they in fact make orders for secret committee meetings. The mere danger that this system can give rise to the local party dictator system, which was the birth of Fascism, is sufficient to render a change in the law urgent and imperative. With regard to the Court of Appeal's decision in *De Buse* v. *McCarty*, *supra*, the rule, as stated by LORD GREENE, M.R., that ratepayers are not interested in the internal working of the administrative machine until it emerges in the shape of some practical action seems *prima facie* undemocratic, and further consideration is required of the question why local authorities should in this respect differ from the mother of Parliaments.

Miners' Relief Funds.

IT is necessary to add to our previous comment (see *ante*, p. 24) on the correspondence in the Press with regard to colliery accidents and relief funds, some information which has been given in a letter to *The Times* of 27th January from Mr. G. W. BENNETT, Secretary of the Central Association of Miners' Permanent Relief Societies. He wrote that the question is often heard, what provision is made for the single mining fatal cases which occur week by week, and of which the public hear little or nothing? There are established, he stated, in seven coalfields, miners' permanent relief societies, which are registered friendly societies, and were founded between the years 1862 and 1883—long before the passing of the first Workmen's Compensation Act—for the relief of distress caused by mining accidents. At 31st December, 1940, the accumulated funds of the societies stood at £1,003,487, and their membership was 191,117. To that date they had paid in benefits £15,202,148. It will therefore be seen, wrote Mr. BENNETT, that there is already in operation a method by which the provisions of the Workmen's Compensation Acts can be supplemented by the miners themselves. With regard to the suggestion as to the pooling of balances from various public funds which have been raised by subscriptions from a generous public on the occurrence of great mining disasters, Mr. BENNETT wrote that in the societies generally it is no uncommon experience to find widows remaining on the funds more than fifty years after the breadwinner has been killed in a mining accident. It is believed, he wrote, that inquiry would show that there are no dormant funds raised for colliery accidents. Miners' permanent relief societies deserve the fullest recognition from colliery owners and the public, and the mere fact that the question of the allocation of surplus funds should have been publicly discussed proves that not sufficient is known of their activities.

Trust Capital and Vesting Procedure.

SOME comment appeared in the City Notes of *The Times* of 6th February on the position of trustees with regard to such stocks as may be acquired by the Government under the vesting order procedure. It was pointed out that a private individual can treat part of the price he receives as interest, while a trustee has no legal power to do so. This, of necessity, causes a hardship to the beneficiaries of trusts, as the price paid for requisitioned stock includes accrued interest, and the whole of the purchase money in the hands of the trustees has to be treated as capital. Life tenants, it was stated, may be placed in the position of having no income at all for the time being if the whole of the trust capital is invested in the particular stocks involved, for even if the trustee does what he is urged to do and reinvests the money in the Government's "tap" issues, interest on such loans runs only from the date of purchase. It had been suggested that trustees should be authorised to pay to life tenants that proportion of the purchase-money which represents accrued interest, and that this could be done by means of an amendment of the Defence (Finance) Regulations. The writer pointed out that, so far as the regulations are open to interpretation by the layman, they give no such power, and an alteration of the general law of trusts would be required. This would raise broader considerations than those of war-time hardships. The life tenant, it was stated, must face a loss of interest even in peace time on an exchange of investments, and legislation would have to deal with all cases and not merely individual cases of hardship. It would also, in equity, have to be retrospective, and there are a number of legislative and practical difficulties in the way of making it retrospective, owing to the number of cases involved. It certainly does not come within the scope of the Emergency Powers (Defence) Act, 1939, or the Defence (Finance) Regulations, and to attempt a radical alteration of the general law of trusts at critical times like the present would, obviously, be a doubtful service to the community.

Recent Decisions.

In *Eversfield* v. *Story* on 3rd February (*The Times*, 4th February) the Divisional Court (HUMPHREYS, WROTTESLEY and CROOM-JOHNSON, JJ.) held that it would be wrong for a court of summary jurisdiction not to convict any person of an offence against s. 4 (2) of the National Service (Armed Forces) Act, 1941, of failure to comply with a magistrate's order to submit himself for medical examination. The justices had ordered that the defendant (a conscientious objector) should be released on probation and discharged conditionally on his entering into a recognisance in the sum of £5 to be of good behaviour and to seek ambulance or other similar work.

In *Arbon* v. *Anderson and Others* on 5th February (*The Times*, 6th February) the Court of Appeal (MACKINNON, LUXMOORE and DU PARCQ, L.JJ.) held that it was only in plain and obvious cases that recourse should be had to the summary process of dismissing an action under Ord. 25, r. 4, where a statement of claim disclosed no cause of action, and accordingly in an action against the Home Secretary for false imprisonment and breach of statutory duty, while it might be argued that failure to provide prison accommodation in accordance with the material prison regulations was something for which the Home Secretary was responsible, it could not be argued, in the absence of any allegation that the Home Secretary for the time being had authorised it, that improper management of a particular prison was something for which the defendants were responsible, and therefore no cause of action was disclosed on the latter ground.

A Conveyancer's Diary.

War Damage Act.

I RETURN this week to the War Damage Act; points and inquiries about it continue to reach me, and I propose to deal regularly with such as in future may do so. Just at the moment, of course, very little fresh damage is occurring, but I consider the subject almost the most important with which property lawyers have to deal at present, as, on this Act depends the future economic position of so many of our fellow citizens.

It may be remembered that on a number of occasions I have referred to a particular case where valuable furniture was rescued from a fire and repaired at a cost which, though fairly heavy, was nothing like the charge which would ultimately have fallen on the State had the goods been allowed to rot and so become total losses. The applicant had, of course, become legally liable to the repairers, but could not get any payment from the authorities to reimburse him. In particular, he was referred to and fro between the district valuer and the Customs, neither of whom would give a decision. Eventually, however, he learned that the proper authority was the Board of Trade, and applied to them. He was received courteously and with sympathy and was asked to put his case into writing on the footing that he was asking for "reasonable salvage." This he did, and was very shortly paid in full the claim which he had formulated with scrupulous moderation. It is agreeable to report that this matter has thus been settled, since there must be many like cases, and the attitude of the responsible department (when found) was all that it should have been.

A correspondent has asked me to "deal with the case of a settlement on trust for sale and the incidence of War Damage Contribution, as to whether this properly goes against capital or income." He mentions that he has in mind a particular case where the trustees collect ground rents from which contribution is being deducted. I take it that the position is that the trustees have the fee simple in certain land, which I shall call Blackacre, which is subject to a term of years held by A, who has to pay a ground rent to the trustees. The ground rent is, of course, income in the hands of the trustees, who are accountable for it to the tenant for life. A, on the other hand, if he occupies Blackacre, is liable to the Crown for the contribution, assuming that his term is long enough to be a proprietary interest (s. 23 (1) (*b*)). Of course, there may be various lessees holding under A, and, if so, the contribution is actually payable under the same provision by such one of them as is the owner of the proprietary interest which, as against the owners of other proprietary interests, carries the right to possession of Blackacre. Under s. 24 and Sched. IV the person who actually pays the contribution has, against his immediate lessor, a right to indemnity in respect of an aliquot proportion of the payment, calculated upon the length of his term in accordance with Sched. IV. The sum so recoverable may, without prejudice to other methods of recovery, be deducted from any subsequent instalment of rent (s. 28). Deduction is thus only a convenient method of settling the matter. The true position is that the immediate lessor has a duty to pay. Consequently, A, who is liable, as the case may be, either to the Revenue for the whole of the instalment of contribution or to his immediate lessee on one of these indemnities, has, in his turn, a right to recover some amount from the trustees, and may recover the same by deduction from ground rent. The real legal position is, however, that he is liable to pay his whole ground rent to the trustees (to be held by them as income) and they are bound to pay him back a certain sum. The latter payment is, however, a *capital* one (s. 82): apart from deduction it would have to be raised and paid over out of corpus. Consequently, as deduction is a mere matter of machinery, the duty of the trustees is to make good out of capital to the tenant for life the amount of the deduction. A similar position arises in those cases where trustees for sale have invested in one of those mortgages (broadly for the purchase or improvement of a medium or small house or of agricultural property) where the mortgagee has to indemnify the mortgagor against part of the contribution (s. 25).

Another correspondent has sent me particulars of a case which shows how unsatisfactorily the indemnities given by Sched. IV may work out. Certain trustees hold the head-lease of Whiteacre for ninety-nine years from Michaelmas, 1932, at £2,500 a year. There is an underlease at £3,500 a year to X for the whole term except the last three days. The trustees' actual profit is thus £1,000 a year. The contribution is £1,083 a year, and is, of course, payable, as between the trustees and X, by X. This figure of £1,083, being 2s. in the £ of the contributory value, gives a contributory value of £10,830, or almost £11,000. Thus the interest of X, after deducting his rent, is some £7,500. As against X, however, the trustees are liable to pay 40 per cent. of the £1,083, since X's term has over fifty years to run, and the trustees' rent is over a quarter and under a half of the contributory value (see the table in Sched. IV, column (*c*), line 9). Thus, as between X and the trustees, X, whose interest is worth £7,500 a year, has to bear some £650 of the tax, while the trustees, whose interest is £3,500, have to bear some £433. So far the position is reasonably satisfactory. But the difficulty comes with the indemnity to be given by the fee simple owners, whose rent is just under a quarter of the contributory value, so that their liability under column (*d*), line 9, is only 10 per cent., or £108. One thus gets the final position that the contribution falls as follows: On the freeholder, whose net interest is £2,500 a year, £108, or just under a shilling in the £; on the trustees, whose net interest is only £1,000 a year (£3,500 less £2,500), £325 (£433 less £108), or almost seven shillings in the £; on X, whose interest is £7,500 a year, £650, or well under two shillings in the £. The result is, that after deducting income tax at 10s. in the £, the trustees in the quarter when X deducted his indemnity received just £4, and had to pay out some £200 to their lessors. This position seems anomalous and unfair: the remedy would be to let the table stand unless any person interested objects, but to allow objectors, at their own risk as to costs, to apply to the court for an apportionment in accordance with the values of the interests.

Finally, the following point is put to me by a frequent and valued correspondent, and I gather that it is not troubling him alone. "In an air-raid a man is killed and the same bomb destroys his house. What is realty and what is personalty? Is only the site realty and the right to compensation personalty? What would happen if the house was specifically devised and the residuary personalty given to someone else?" These questions are asked, of course, on the footing that the house is destroyed, i.e., that the appropriate payment is a value payment. If there were to be a cost of works payment no question would arise, as such a payment goes to him who incurs the expense, and for the above purposes would be ignored as merely cancelling out with liability to pay the contractors' bills. Assuming, then, that the payment is a value payment, I conceive that its legal nature is *personalty*, since s. 9 (7) provides that the right to receive a payment is "transmissible . . . as a personal right." For estate duty purposes it is part of the personalty. But it seems clear that the value to be placed on any such right must be much discounted below its face value, since, though the payment may be *debitum in præsenti*, it is not merely *solvendum in futuro*, but *in incerto futuro*. I should be quite prepared to agree that at the death the right is almost valueless. On the other hand, though the right is personalty, s. 46 (2) provides that a testamentary disposition of land which sustains war damage after the date on which such disposition is made is to operate also as a bequest of any payment under the Act to which the testator may become entitled in respect of such land. The value payment therefore goes as personalty to the specific devisee and not to the residuary legatee. The site, of course, remains realty and passes under the devise; for duty purposes also the site remains realty.

Criminal Law and Practice.

Evidence of Character.

ONE of the fundamental principles of the criminal law is that a defendant's character or reputation is not to be used in evidence against him unless he himself puts it in issue. This rule has been applied in various ways and is, of course, subject to certain exceptions. The defendant may, for example, give evidence of his good character, in which case it becomes a direct issue in the trial. Moreover, there is the well-known exception in s. 43 of the Larceny Act, 1916. On a charge of receiving stolen goods, evidence is admissible that other property stolen within the previous twelve months was found in the possession of the accused or that he has within five years preceding the charge been convicted of an offence involving fraud or dishonesty.

Other cases in which a defendant's character might become an issue at the trial may arise where it is necessary to establish the identity of the accused, and also where the defence is raised that the acts alleged to constitute the crime charged are accidental and not designed (see *per* Herschell, L.C., in *Makin*, v. *A.-G., New South Wales* [1894] A.C. 57, 65). This was applied in the well-known case of *R.* v. *Armstrong* [1922] 2 K.B. 555, in which evidence was held to be admissible in a charge of wife murder by administering arsenic where it went to prove that the prisoner administered arsenic to another person eight months after his wife's death. The evidence was given to show that the defendant's possession of the arsenic was not innocent, as suggested by the defence.

The vigilance and restraint with which the Court of Criminal Appeal will allow exceptions to the general rule against giving evidence of bad character in criminal cases was well illustrated in the recent case of *R.* v. *Cole* (1941), 165 L.T.R. 125. The prisoner had been sentenced to nine months' imprisonment for indecent assault and gross indecency. There had been no evidence that the principal witness for the prosecution was an accomplice, and the accused might have been convicted on his evidence alone. The prosecution, however, wished to adduce in evidence certain letters dated as far back as 1926 and 1927, which the police had found in the room of the defendant, and which they said showed that he was the sort of man who was addicted to immoral practices. The defence was that the acts alleged had never taken place, although it was admitted that steps taken for the purpose of

relieving sickness were capable of an indecent connotation. The learned judge, who decided the question of admissibility before a word of defence had been raised, held that the letters were admissible on the ground that a defence of accident had been raised. What the learned judge was referring to was that the appellant had in the police court answered a question in cross-examination in such a way as to indicate that he might be going to raise at the trial the question of accident as distinct from design.

The learned judge rejected the contention that the letters were admissible on the same ground as the photographs were admissible in *R.* v. *Twiss* [1918] 2 K.B. 853, i.e., " just as possession of the tools of a burglar or the apparatus of an abortionist is evidence as showing the possession of appliances and implements used by people carrying on that particular kind of business in crime. (See also *R.* v. *Gillingham* (1939), 162 L.T. 16.)

The judgment of the Court of Criminal Appeal was given by Humphreys, J. He first of all remarked unfavourably on the practice, in any case where it was not clear and undisputed what the issues were going to be, of the prosecution asking that the jury should go out of court to argue the question of admissibility, a question which depended on what the issues were going to be. He said that the practice might be convenient as saving a little time in a case where the defence to be raised was a matter of common agreement, and if that were so there was no reason why the matter should not be argued upon that basis.

His lordship also referred to the leading case of *R.* v. *Thompson* [1918] A.C. 221, which decided that in a case where identity is raised as a defence, articles found on the accused " which would indicate or might indicate that he was a person of the nature of the person accused of the particular crime " were admissible as tending to show that he was in fact the person who did commit the crime alleged.

The court held that the letters were inadmissible on the ground that the defence was that the acts alleged had not been committed, and there was no defence of accident.

One other point of outstanding importance was emphasised by Humphreys, J. The letters in question were fifteen years old, and the learned judge stated that even if they had been admissible in law the trial judge might well have exercised his discretion on the lines referred to in *R.* v. *Christie* [1914] A.C. 545, having regard to its prejudicial nature.

Our County Court Letter.

False Imprisonment.

In *Wasley* v. *Jolly*, recently heard at Birmingham County Court, the claim was for £200 as damages for malicious prosecution and false imprisonment. The plaintiff had formerly been employed by the defendant at licensed premises, and she was alleged to have stolen 17s. 6d., being the amount paid for a meal consumed by a party of five. The matter was reported to the police, and the plaintiff was detained for about seven hours. On her plea of " Not guilty," the magistrates subsequently dismissed the charge. The plaintiff contended that the defendant made the charge against her the morning after she had announced her intention of leaving his employment. When she was about to leave by bus, the defendant took one of her cases back to the hotel. The case for the defendant was that he was not the prosecutor, as proceedings were taken by the police. A constable gave evidence that the defendant had stated he wished to prefer a charge. At an interview, the plaintiff denied stealing the money, but the constable honestly believed she was guilty. Otherwise he would not have assumed the responsibility of taking her into custody. The defendant had been asked by the constable to go to the station and sign the charge sheet. His Honour Deputy Judge Churchill was satisfied that the plaintiff had done nothing dishonest. The defendant, however, had no wrong motive in bringing the charge, and had not been told by the plaintiff that she was leaving. There had been no malicious prosecution, but judgment was given for £8 8s. for false imprisonment.

Suspension of Omnibus Service.

In a recent case at Ruthin County Court (*Homersley* v. *Peters Bros.*) the claim was for 30s. as damages for breach of contract. The plaintiff was a miner, and his case was that he had a weekly contract with the defendants to convey him to and from his work. The defendants held the sole licence from the Traffic Commissioners, and had undertaken to run vehicles daily for the three shifts. Nevertheless, the night shift was missed on the 2nd May and the day shift on the 8th May, whereby the plaintiff had lost wages. The defendants denied that their failure to maintain the omnibus service was due to their finding it more profitable to convey silica for Government contractors. The original difficulty was that the service resulted in a loss of £4 a week, and eventually a scarcity of drivers was caused by war conditions. His Honour Judge Sir Artemus Jones, K.C., held that the defendants had failed to prove that they had made every effort to keep scheduled time. Judgment was given for the plaintiff, with costs on Scale B.

Landlord and Tenant Notebook.

Mesne Profits.

Whatever be the origin of the use of the expression " mesne profits," convenience has justified its continuance. Scientifically, it might be said that the distinction between mesne profits and damages for trespass *quare clausum fregit* was one of those without a difference. The law does not differentiate between him who remains in possession of land he was bound to quit and him who takes possession of land to which he has no title. " Mesne profits, being damages for trespass " are the opening words of the judgment of Astbury, J., in *Elliott* v. *Boynton* [1924] 1 Ch. 236 (C.A.), which is, I believe, the most recent authority dealing with mesne profits, though their nature was not directly in issue. The question which had to be decided was from what date were mesne profits to be assessed when a lease was forfeited on the ground of breach of a covenant against sub-letting without consent (before L.P.A., 1925, there was no relief in such cases). There had, in fact, been several breaches, spread over a period of two years, before the plaintiff became aware of what was happening, which was in March, 1922; and then, after a short correspondence, he issued a writ for the recovery of possession on 12th May; there was no appearance, and on 26th June an order was made that he recover possession, " mesne profits to be assessed." Now the first breach of covenant had occurred on 20th October, 1919, and the rental value of the premises was much higher than that of the rent reserved; so when the Master assessed mesne profits as from the date just mentioned, the defendant thought of three other dates—12th May, 1922 (the date of the issue of the writ), 25th December, 1921, when the last gale of rent had been paid, and 28th October, 1921, which was the occasion of his last breach of covenant against alienation; and he took out a summons to review the certificate asking that assessment should be made from one of those dates. But argument centred round the rival claims of the date of the first breach and that of the issue of the writ. Sargant, J., decided in favour of the latter, and was upheld on appeal.

The real ground of the decision was the well-established proposition that a proviso for re-entry operates so as to make a lease voidable, not void; the defendant held under the lease, and was not a trespasser, " until some conclusive determination thereof by the lessor in the exercise of his option," as Warrington, L.J., put it. Incidentally, that phrase, and Pollock, M.R.'s " it is necessary for the plaintiff in this case to take such a step," i.e., " do some act evidencing his intention to enter for the forfeiture and determine the lease," and Astbury, J.'s " by entry or by writ," warrant the proposition that the headnote, which states " the mesne profits are assessable from the date of the writ," is too narrow. The issue of a writ does, indeed, amount to unequivocal election; but a lessor may intimate his decision so as to make his intention quite unmistakable in other ways. I am not, of course, thinking of forcible entry (for which I am said, by readers of this " Notebook," to have a predeliction) this time, for that particular mode of evidencing intention is so unequivocal as to leave no cause of action for mesne profits.

As to the date to which assessment is to be made, when the Common Law Procedure Act, 1852, enabled landlords to claim possession and mesne profits in the same action, s. 214 authorised juries to award " mesne profits down to the time of the verdict, or to some preceding day to be specified therein," but by a proviso " nothing hereinbefore contained shall be construed to bar any such landlord from bringing any action for the mesne profits which shall accrue from the verdict, or the day so specified therein, down to the day of the delivery of possession . . ." This shows that the Legislature was conscious of the character of mesne profits as damages for trespass; and when Ord. III, r. 6, introduced the modern summary procedure, it was held, in *Southport Tramways Co.* v. *Gandy* [1897] 2 Q.B. 66 (C.A.), that calculation might be ordered " up to the date of the plaintiffs' obtaining possession." (The defendant in that case was the contumacious type of trespasser: he stated that he would not give up possession, and added that possession was nine points of the law.)

The language of s. 1 (1) of the Courts (Emergency Powers) Amendment Act, 1940, is, perhaps, just consistent with this standpoint. The subsection restricts the exercise of the judicial discretion under the principal Act in this way: on a landlord applying for leave to exercise rights and remedies mentioned in s. 1 (1) to (3), of the 1939 Act (judgments for sums of money, distress, re-entry, etc.; and recovery of possession in default of payment of rent), " being a right of remedy arising in consequence of a default in the payment of rent *or mesne profits*," leave must not be made conditional on any default in the payment of rent *or mesne profits* falling due after the date of the hearing of the application.

What shocks one at first sight is that Parliament, even when enacting emergency measures, should impliedly sanction trespass to land, speaking of damages for such as if they enjoyed the same status as rent. It was, however, always possible for payment of sums so described to be made a condition of relief against forfeiture, and presumably it is this position which is being dealt with.

To-day and Yesterday.

LEGAL CALENDAR.

9 February.—John Beaumont became Master of the Rolls in 1550, but barely a year later, on the 9th February, 1552, he was put in prison "for forging a false deed from Charles Brandon, Duke of Suffolk, to the Lady Anne Powis of certain lands and leases." From his subsequent confession, it appeared that during the progress of a cause before him between the succeeding duke, Henry, and the lady, he had bought her title and forged the hand of the late duke to support it. He was also charged with extensive peculation. Of course, he gave up his office and also surrendered all his lands and goods to the king, with the provision that just allowances should be made to him. With this lenient treatment he got off. He was described as "a man of a dull and heavy spirit, and therefore the more senselessly devoted in his sensual avarice."

10 February.—Montesquieu, the great French philosophical historian, was, by profession, a lawyer. In 1714 he was admitted counsellor of the Parliament or High Court of Bordeaux, and in the following year he inherited from his uncle, Jacques de Secondat, Président à Mortier in that court, his judicial office and his whole fortune, for judicial office in France was then transmissible by bequest or sale. His duties as a judge did not interfere with his literary tastes and activities and his *Lettres Persanes*, a finished satire in the guise of the imaginary letters of two Persians travelling in Europe, had an immense popularity. In 1726 he sold the life interest in his office, retaining the reversion for his son, and travelled in Austria, Hungary, Italy and England, for which he acquired a deep admiration. Afterwards he settled on his estate at La Brede, near Bordeaux, where he lived as a squire and composed his great work in thirty-one books, *L'Esprit des Lois*, a study of the relationship between laws and the constitution of each government in the light of custom, climate, religion and trade. Its fertile originality, free both from visionary enthusiasm and any undue spirit of system, placed it among the most important works of the eighteenth century. Montesquieu died on the 10th February, 1755.

11 February.—William Parsons, though handsome and well mannered, the eldest son of a baronet and a relation of the Duchess of Northumberland, under whose will he had expectations, had not a character to come to any good. He was expelled from Eton for pilfering. He was sent to sea and on two occasions deserted his ship. Then the Duchess excluded him from her will and he had to accept a post at James Fort, on the River Gambia, but a quarrel soon brought him home in defiance of the Governor's orders. At first he lived by fraud, but the luck of marrying a young lady of fortune set him up again and he obtained a commission in the 34th regiment of foot. However, he lived beyond his means, and was soon making his living by forgery. Convicted and transported to Maryland, he committed several robberies and in a short time was back in England as a highwayman. An unsuccessful hold up of the gentleman who had prosecuted him for forgery, led to his capture, and on the 11th February, 1751, he was hanged at Tyburn for returning from transportation.

12 February.—Bacon was ever hunting for promotion, and early in 1616 the illness of Lord Chancellor Ellesmere gave him hopes of the Great Seal. On the 12th February he wrote a letter to King James begging for the reversion of the place, boasting what he would do if he obtained it and deprecating possible competitors, especially Chief Justice Coke, on the ground that to "put an overruling nature into an overruling place" might "breed an extreme." About a year later he obtained his desire and from the office of Attorney-General rose to the Woolsack.

13 February.—James Shaw Willes, son of an Irish physician, was born at Cork on the 13th February, 1814. He came to England and was called to the Bar at the Inner Temple in 1840, thereafter practising chiefly in the Court of Exchequer. In 1855 he was appointed a Justice of the Common Pleas and knighted. His high reputation as a lawyer caused him to be placed on the Indian Law Commission in 1861, and the English and Irish Law Commission in the following year. In spite of his judicial office, he served in the ranks of the Inns of Court Volunteer Corps from 1859. He came to a tragic end, the strain of overwork bringing him to suicide.

14 February.—On the 14th February, 1785, a remarkable breach of promise case was tried in the Common Pleas. The plaintiff produced a Bible, wherein an entry was made as follows: "I promise to make —— my unlawful wife for twelve months or forfeit £100." It was proved that the parties lived together for three years, during which time the plaintiff had two children by the defendant. The jury gave her £300 damages.

15 February.—On the 15th February, 1827, just as the "Commerce" steam packet was about the sail from Dublin, a young sailor was taken ashore by the police and, being lodged in Bridewell, confessed to being a woman. It turned out that she was the daughter of a merchant and shipowner in London and was entitled to a considerable fortune then in Chancery. Three years before, being then "of fashionable appearance, elegantly dressed and ladylike in her deportment," she had run away to follow a young man she loved, first to St. John's and then to Quebec, where she learnt he had been drowned. She determined to become a sailor in memory of him, taking his name of William Brown, cutting her hair, dressing as a man, indulging in grog and "backee," and even flirting with the girls. One courtship got as far as publication of the banns. Brought before the magistrate, she declared she was a sailor and had always done her duty, and said she was at a loss to know why she was detained. As the magistrate had no authority to prevent her following her inclination she was discharged.

TRIAL BY ORDEAL.

An extract from *The Times* of a century ago, recently reprinted, told of a curious and apparently highly effective survival of trial by ordeal, revealed at the hearing of a charge of robbery before the Yarmouth magistrates. The prisoner had been detected by the test of the Bible and the key. These were suspended in a certain way from the finger of any suspected person; an incantation was pronounced and the book was expected to revolve in the case of the guilty and hang still for the innocent. When the experiment was tried on the prisoner the Bible twirled rapidly and she confessed her guilt. She was committed for trial. Before the Lateran Council issued a solemn decree against trial by ordeal in 1215, it had flourished in various forms from pre-Christian times. There was ordeal by water, whereby a man was cast into water which had been enjoined to cast him forth if he were guilty and receive him into its depths if he were innocent. (Long afterwards a survival of this test was employed in lynching witches.) There was the ordeal of plunging the hand into boiling water, grasping red-hot metal, or walking on red-hot ploughshares, a speedy healing establishing innocence. There was also the Cursed Morsel of barley bread which stuck in the throat of the guilty. Related to these was the popular belief that if a murderer touched his victim's body it would bleed afresh and more than once experience has given some support to it. One of the most dramatic occasions of which we know occurred in the course of the case of Philip Stanfield, eventually convicted at Edinburgh, for the murder of his father. He had assisted at the exhumation of the old man's body and in doing so touched it. Everyone saw blood gush forth and the prosecution made much of this portent at the trial.

Reviews.

A Handbook on the Death Duties. By H. ARNOLD WOOLLEY, Solicitor of the Supreme Court. Fourth Edition, 1942. London: The Solicitors' Law Stationery Society, Ltd. 18s. 6d. net.

The author modestly disclaims an intention that this work is a substitute for "Dymond" or "Hanson." The fact remains, however, that the practitioner with a moderate practice will probably find that it furnishes all the information he needs on the troublesome subject of claims for death duties. The summary of changes by recent statutes, the hints to conveyancers with suggestions for saving of duty, and the tables of specimen estates are features which are not, we think, to be found in any other work. That very difficult subject, voluntary gifts and settlements of life policies, is fairly fully dealt with by reference to the latest cases up to that (p. 104) of *Lord Advocate* v. *Hamilton* in the Court of Session, 1941. The author, perhaps wisely, does not attempt to reconcile the decision in this case with that of the Court of Appeal in *Westminster Bank, Ltd.* v. *Attorney-General*, quoted on p. 100. The present writer is frankly unable to do so.

Whilst giving unstinted praise to this book, we may perhaps be allowed a few minor criticisms.

On p. 6, as to the situation of stocks and shares being governed by the situation of the register of shareholders, it might have been pointed out that a company registered in Great Britain under the Companies Act, 1929, must have its registered office in England or Scotland and must keep its register of members at its registered office. On p. 12, the words "if domicile is in Great Britain" might usefully have been inserted after "personalty abroad," although the subject of domicile is adequately treated elsewhere. Under the heading "Limitation of Liability" on p. 39, a reference to the following chapter might well have been substituted for para. (*b*). On p. 114 there might have been added a direction that estate duty is to be paid out of testator's estate in respect of some property (such as a gift within three years of death), the duty on which would otherwise fall on the beneficiary, amounts to a legacy upon which legacy duty must be paid.

In the specimen estates, Chapter XVI. we think the words "persons to bear the duty" would have been preferable to "accountable parties." In Case 2, the £1,000, amount of legacies to charities, is a clerical error for £1,500.

These, however, are all minor matters which hardly detract from the book's usefulness.

Handbook on Workmen's Compensation Claims. By SIDNEY H. DOUGHTY, Claims Department, Midland Employers' Mutual Assurance, Ltd. 1942. pp. 40. London: Stone & Cox, Ltd. 5s. net.

The value of this book must not be judged by its size. It occupies few pages, but achieves its object in stating as

concisely as possible the main points to be observed in considering an employer's liability to employees. The clear explanation of the position at common law is particularly valuable.

Books Received.

Paterson's Licensing Acts, with Forms. Fifty-first Edition, by JAMES WHITESIDE, Solicitor and Clerk to the Justices for the City and County of Exeter. 1942. Large crown 8vo. pp. cxvi, 1498 and (Index) 177. London: Butterworth & Co. (Publishers), Ltd. Thick ed. 25s. net; thin ed. 28s. 6d. net.

The Law Quarterly Review. Edited by A. L. GOODHART, D.C.L., LL.D. Vol. LVIII. No. 229. January, 1942. pp. 148. London: Stevens & Sons, Ltd. 6s. net.

English Studies in Criminal Science. Edited by L. RADZINOWICZ, M.A., LL.D., and J. W. CECIL TURNER, M.A., LL.B. Note by P. H. WINFIELD, F.B.A., LL.D., J.P. Pamphlet No. 1. Conviction and Probation. By Lieut.-Col. WILLWAY, T.D., H. E. NORMAN, O.B.E., J.P., GEORGE BENSON, M.P., and Prof. EDWIN SUTHERLAND. 1942. pp. 26. Cambridge: Squire Law Library. 2s. net.

The Public General Acts and the Church Assembly Measures, 1941. pp. liv. London: H.M. Stationery Office. 9d. net.

Cumulative Supplement to Ninth Edition of Underhill's Law relating to Trusts and Trustees. By Miss M. M. WELLS, M.A. (Cantab.), of Gray's Inn, Barrister-at-Law. 1942. pp. viii and 14. London: Butterworth & Co. (Publishers), Ltd. 5s. net.

The North Carolina Law Review. Vol. 20. No. 1. December, 1941. U.S.A.: University of North Carolina. Subscription $3.00 per annum, 80 c. per copy.

Obituary.

SIR JOSEPH CHITTY.

Sir Joseph Henry Pollock Chitty, Master of the Chancery Division of the Supreme Court from 1910 to 1932, and Chief Master from 1932 to 1936, died on Friday, 6th February, aged eighty-one. An appreciation appears at p. 43 of this issue.

MR. D. B. MILNE.

Mr. David Barrett Milne, solicitor, of Theobald's Road, Gray's Inn, W.C.1, and Wallington, Surrey, died on Sunday, 25th January. He was admitted in 1900, and was a brother of Mr. A. A. Milne, the author and playwright.

MR. C. L. RUDDOCK.

Mr. Charles Lock Ruddock, who formerly practised as a solicitor at Queen Street, Yarmouth, died on Saturday, 24th January, aged eighty-three. He was admitted in 1887.

Parliamentary News.

PROGRESS OF BILLS.

HOUSE OF LORDS.

Education (Scotland) Bill [H.L.].
Read Third Time. [10th February.
War Orphans Bill [H.C.].
Read First Time. [10th February.

HOUSE OF COMMONS.

Landlord and Tenant (Requisitioned Land) Bill [H.C.].
Reported, with Amendments. [4th February.
India (Federal Court Judges) Bill [H.L.].
Patents and Designs Bill [H.L.].
Read Third Time. [10th February.
Restoration of Pre-war Trade Practices Bill [H.C.].
Reported with Amendments. [10th February.
Securities (Validation) Bill [H.C.].
Read Second Time. [10th February.

Notes.

Mr. J. Abady, K.C., Mr. K. S. Carpmael, K.C., Mr. G. F. Kingham, Mr. L. A. Byrne, Mr. Anthony Hawke, and Mr. F. E. Skone James have been elected Masters of the Bench of the Middle Temple.

A massive manuscript volume of evidence given before a Private Bill Committee 100 years ago was produced at a recent meeting of a Select Committee of the House of Commons. The Select Committee is considering which records or documents of the House can be given for salvage and which are of sufficient historical interest to be preserved. Sir William Codling, Controller of H.M. Stationery Office, said that the manuscript volumes weighed 50 tons. The cost of micro-filming them would be more than the market value of the paper, but it would be worth while if the cost and extent of storage accommodation were taken into consideration. The film record of the volumes could be stored in a single cabinet. Stationery Office records had been damaged in air-raids, and a watch was kept for copies of those which were lost.

Notes of Cases.

COURT OF APPEAL.

Roadways Transport Development, Ltd. *v.* **Attorney-General.**

Lord Greene, M.R., and Clauson and du Parcq, L.JJ. 18th December, 1941.

Requisition—Vehicle impressed for use of Army—Value paid to person in possession of vehicle who had no title to it—Whether payment to be deemed to be payment to real owners—Army Act, 1881 (44 & 45 *Vict. c.* 58), *ss.* 112, 113 (4), 115 (4).

Appeal from a decision of Farwell, J. (85 SOL. J. 273).

The plaintiff company were the owners of a Bedford truck which by an agreement of the 22nd June, 1939, they had let on hire-purchase terms to T. & R. Under the agreement the property in the truck remained in the plaintiffs. Only one instalment was paid under the agreement and the plaintiffs had become entitled to retake possession of the truck. On the 24th October, 1939, the truck had, without the plaintiffs' knowledge or consent, got into the possession of A.H., Ltd. On that date, pursuant to a requisition of emergency under s. 115 of the Army Act, a warrant was issued and served on A.H., Ltd., for the provision of the truck for the purpose of its being purchased for His Majesty's Forces. The truck was delivered and the Army Council paid to A.H., Ltd., the sum of £380, the assessed compensation for the truck. No payment was made to the plaintiffs. The Army Act, s. 112, provides for the requisition, *inter alia*, of carriages for the purpose of moving regimental baggage along a specified route. Section 113 provides for payment in respect of carriages furnished under the preceding section. Subsection (4) then provides: "The possessor of any carriage or animal at the time of impressment shall be deemed to be the owner for the purposes of the procedure of impressment where it is not otherwise declared at the time, and payment made to the possessor shall be deemed to be payment to the owner. In the event of the property being vested in another person or persons, the possessor shall notify all others interested in the property and adjust the amount received in due proportion. In the event of any difference arising, the amounts shall be apportioned on a certificate of a county court judge as aforesaid." Section 115 provides that His Majesty may by order, distinctly stating that a state of emergency exists, authorise a field officer to issue any requisition for the provision, *inter alia*, of carriages which are to be delivered at such place as is specified in the requisition. Subsection (3) of s. 115 applies the provisions of the Act as to the furnishing of carriages or animals under other sections of the Act to such furnishing under s. 115. The Army Council had assumed that the provisions of subs. (4) of s. 113 applied to every case of impressment and that the army officer was not concerned to see that the owner of the carriage received the purchase-money, but payment could be made to the possessor for the time being. The plaintiffs issued this summons, to which the Attorney-General was defendant, asking whether, on the true construction of the Army Act, the payment by the Army Council to A.H., Ltd., was to be deemed to be payment to the plaintiffs as owners of the truck. Farwell, J., held that on the true construction of the Army Act, the payment to A.H., Ltd., was not to be deemed to be payment to the plaintiffs as the provisions of subs. (4) of s. 113 did not apply to requisitions under s. 115.

CLAUSON, L.J., allowing the appeal, said that, reading s. 113 (4) with s. 115, he could see no escape from the conclusion that, although the sums payable under s. 115 might be very large as compared with the sums payable for a temporary user under s. 112, nevertheless the legislature had thought fit to make the same provision in the one case as the other, and accordingly payment to the possessor of the vehicle by virtue of s. 113 (4) and s. 115 (3) and (7) protected the Army Council from any further claims, the true owner being left to his remedy against the payee. Farwell, J., had failed to give due effect to subs. (3) of s. 115.

DU PARCQ, L.J., and LORD GREENE, M.R., concurred in allowing the appeal.

COUNSEL: *The Solicitor-General* (The Rt. Hon. Sir William Jowitt, K.C.) and *Danckwerts*, for the appellant; *G. G. Honeyman*, for the respondents.

SOLICITORS: *Treasury Solicitor; Kimber, Bull & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

CHANCERY DIVISION.

In re **Bower's Settlement Trusts; Bower** *v.* **Ridley-Thompson.**

Morton, J. 28th November, 1941.

Settlement—Construction—Trust fund settled in unequal shares—Proportions in which accruing shares accrue to original shares.

Adjourned summons.

By a settlement dated the 15th February, 1922, B, the settlor, directed the trustees to hold the trust fund upon trust to divide it into shares and to hold one share (in effect) upon trust for his son, J, for life, with remainder upon trust for J's children and issue. By cl. 12 it was provided that if the trusts declared concerning J's share should fail, his share and any additional share or shares which might accrue thereto and the income thereof was to go and accrue by way of addition to the other shares and be held upon the trusts concerning the original share or as near thereto as circumstances would permit. The remaining shares of the trust fund were settled by reference on similar trusts for the benefit of the settlor's other seven children. The shares settled on the children were unequal. One child, B, died in 1940 without issue and the trusts concerning his share failed. This summons raised the question whether B's original share and any share which might accrue thereto under the settlement accrued to the other shares in equal proportions or in proportion to the original shares to which the same accrued.

MORTON, J., said that the point did not seem to have arisen before. If he were entitled to guess what the settlor intended he would hold that the accruer should be in the same proportions as the original share. On the actual language, however, there was nothing to give any one share a larger proportion of an accruing share than another. In the absence of words indicating a contrary intention, the accruer must be to the other shares in equal proportions.

COUNSEL: *Wilfrid Hunt; Lindner* (for *T. Burgess*, on war service); *J. A. Wolfe; R. Jennings; Winterbotham; Hewins.*

SOLICITORS: *Austin J. Wright*, for *Lawson, Lewis & Bairstow*, Eastbourne; *Fisher & Dowson.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re R. W. Johnson, Ltd.

Simonds, J. 15th December, 1941.

Emergency legislation—Company—Petition to wind up—Protection order made by the registrar of the county court—Procedure—Transfer to county court—Liabilities (War-Time Adjustment) Act, 1941 (4 & 5 *Geo.* 6, *c.* 24), *ss.* 3, 20.

Petition.

J., Ltd., was a private company with two shareholders. On the 16th May, 1939, a declaration of solvency under s. 230 of the Companies Act, 1929, was made, and on the 17th February, 1940, a special resolution was passed for winding up, the respondent being appointed liquidator. The petitioners obtained judgment against the company for £204 in August, 1941, and on the 27th November, 1941, presented a petition to wind up the company. On the 13th December, 1941, two days before the hearing of the petition, the Registrar of Croydon County Court on an *ex parte* application without any notice to the applicants made a protection order under the Liabilities (War-Time Adjustment) Act, 1941, and sent a notice of it to the Chief Master of the Chancery Division. When the petition for winding up came before the court an application was made under the Act to stay the proceedings. Section 3 (2) of the Act provides that where a *prima facie* case has been made under subs. (1) the court may make a "protection order": "and, while any such order is in force—(*a*) any proceedings against the debtor or his property in respect of any provable debt . . . shall be stayed . . ." Section 20 (4) provides that "When any proceedings pending in the High Court are stayed by virtue of a protection order, the High Court may direct that the proceedings shall be transferred to the court which made the order."

SIMONDS, J., said that if he had a discretion he would not allow the company to avail itself of the benefit of the Act as he considered the case fell outside its purview. On the language of the Act, however, it was incumbent on him to stay the proceedings. There was no way out of that unless he transferred the proceedings under s. 20 (4) to the county court. It was desirable that he should avail himself of s. 20 (4). Accordingly he would direct the proceedings to be transferred to Croydon County Court.

COUNSEL: *L. M. Jopling.*

SOLICITORS: *Tamplin, Joseph, Ponsonby, Ryde and Flux.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Forster's Settlement; Forster *v.* Custodian of Enemy Property for England.

Morton, J. 17th December, 1941.

Settlement—Enemy entitled to life interest in settled fund—Enemy has power to consent to exercise of power of advancement—Whether consent can be dispensed with—Whether Board of Trade can consent—Trading with the Enemy Act, 1939 (2 & 3 *Geo.* 6, *c.* 69), *s.* 7.

Adjourned summons.

By a post-nuptial settlement dated 9th July, 1919, made between F and his wife and trustees, a £10,000 trust fund was settled after the death of the husband upon trust to pay the income to the wife during her life, and subject thereto upon trust for the children of the husband by that or any other marriage as the husband should appoint, and in default upon trust for his children at twenty-one or marriage. By cl. 4 (3) it was provided that the trustees might at any time with the consent of the husband or wife or survivor of them, if living, raise one-half of the share of any child for his advancement or benefit. In 1924 the marriage of F and his wife was dissolved. F remarried, and three children of that marriage were living. There had been no children of his first marriage. The first wife, in 1930, married an Austrian, and since the war began it was believed that she was resident in Germany. In 1941 F died, and the income under the settlement became payable to his first wife. No order had been made under s. 7 of the Trading with the Enemy Act, 1939, vesting the life interest of the first wife in the Custodian of Enemy Property, but under the Trading with the Enemy (Custodian) Order, 1939, the income as it fell due was payable to the Custodian. The trustee of the settlement was anxious to exercise the power of advancement as the second wife and her children were unprovided for. This summons raised the question, *inter alia*, whether the trustee had power to make advances under cl. 4 of the settlement to the settlor's children without the consent of the first wife.

MORTON, J., said that he could not, in the circumstances, presume the death of the first wife. It was submitted for the infant children that her consent was unnecessary, if a vesting order was made in favour of the Custodian of Enemy Property. *In re Cooper* (1884), 27 Ch. D. 565, was relied upon. That case did not support the contention that the consent of the first wife could be dispensed with. It was further suggested that the court could authorise the advance (*Klug* v. *Klug* [1918] 2 Ch. 67). That decision was no authority for saying that the court could take that course. It was not possible for the Board of Trade to confer power in the Custodian to consent. Such a power did not come within s. 7. Therefore the trustee had no power to make advances under cl. 4 without the consent of the first wife.

COUNSEL: *Geoffrey Cross; Solicitor-General* (Sir William Jowitt, K.C.) and *Danckwerts; J. Pennycuick.*

SOLICITORS: *Smith & Hudson*, for *Harold Michelmore & Co.*, Newton Abbot; *Solicitor to the Board of Trade.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Williams-Ashman *v.* Price and Williams.

Bennett, J. 19th December, 1941.

Trust—Trustees instruct solicitors to call in trust moneys invested on mortgage—Moneys applied by solicitor on trustees' instructions in breach of trust—Solicitor overlooks trust—Whether solicitor a constructive trustee—Liability.

Witness action.

In 1927 £900, part of the proceeds of sale of certain property belonging to the vicar and churchwardens of a London parish was invested on mortgage in the joint names of M, the then vicar, and S. A declaration of trust, dated 10th October, 1927, was executed under which the trust premises were to be invested in trustee securities and the income was payable to the incumbent for the time being of the parish. The first defendant, W, a solicitor, with the assistance of the second defendant, F, his managing clerk, carried out the transaction. In 1936 on M's instructions, £200, part of the mortgage debt, was called in and paid to W, who, on instructions from S, paid this sum to M. The sum of £200 was then paid by M to F, who was instructed to, and did, invest it in preference shares in a company of which F was director. In 1937 S died, and M, in that year, instructed W to call in £700, the balance of the mortgage moneys; £300, part of this sum, was, on his instructions, paid to his son and the balance was invested in preference shares in the same company. M died in 1939 and, subsequently, W found the declaration of trust of 1927 in his safe and informed the solicitors acting in the administration of M's estate. In this action the plaintiff, the present vicar of the parish, claimed a declaration that the defendants were liable to make good any deficiency in the trust fund resulting from applications of the fund in breach of trust. He contended that they were liable as constructive trustees and he relied upon *Lee* v. *Sankey*, L.R. 15 Eq. 204; *Blyth* v. *Fladgate* [1891] 1 Ch. 337.

BENNETT, J., said that this case was covered by *Mara* v. *Browne* [1896] 1 Ch. 199. An agent in possession of trust moneys, so long as he acts honestly, is not accountable to the beneficiaries unless he intermeddles in the trust by doing acts outside the duties of an agent. The defendants had not so intermeddled with the trust funds as to become liable as trustees *de son tort* or constructive trustees. They had acted honestly as agents of the two trustees or of the survivor of them. The decision in *Blyth* v. *Fladgate* was distinguishable on the facts. The action failed.

COUNSEL: *Harman*, K.C., and *Winterbotham; Vaisey*, K.C., and *Raymond Jennings.*

SOLICITORS: *Waterhouse & Co.; Price & Williams.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Herrmann *v.* The Metropolitan Leather Co., Ltd.

Uthwatt, J. 28th January, 1942.

Emergency legislation—Landlord and tenant—War damage—Disclaimer—"Multiple lease"—Meaning—Landlord and Tenant (War Damage) Act, 1939 (2 & 3 *Geo.* 6, *c.* 72), *ss.* 15, 24—*Landlord and Tenant (War Damage) (Amendment) Act*, 1941 (4 & 5 *Geo.* 6, *c.* 41), *Schedule.*

Adjourned application.

By a lease dated the 9th May, 1937, the plaintiffs demised to the defendants two adjoining blocks of factory premises connected by a gangway on the second floor for a term ending in 1950 at a rent of £650. On the 12th September, 1940, one block was totally destroyed by enemy action, the second being substantially uninjured. On the 9th October, 1940, the defendants served a notice of disclaimer under the Landlord and Tenant (War Damage) Act, 1939. By this application the plaintiffs claimed a declaration under s. 15 (as amended) of the Act that the lease was still subsisting as regards the undamaged premises and that the rent should be apportioned. A multiple lease is defined in s. 24 of the Act as a "lease comprising buildings which are used or adapted for use as two or more separate hereditaments." Under s. 15 (3) the court may in the case of such a lease, if it is equitable, allow the tenant to exercise the right of disclaimer in respect of the whole or one hereditament only. The learned judge found as a fact: (1) that in the ordinary course of the defendants' business both blocks of the premises were used in the course of the manufacture of any one article; (2) that one block comprising one-third of the factory had been destroyed; (3) that the remaining undamaged building was not sufficiently large for the business of the defendant; and (4) that it had not been reasonably practicable for the defendants to find further accommodation in the neighbourhood which could have been used in connection with the undamaged premises.

UTHWATT, J., said that the first question was whether this lease was a "multiple lease" within the Act. It was argued that buildings were not "adapted for use" unless some physical work of adaptation had been carried on in respect of them. That meaning he rejected. With reference to this case, it seemed to him that a building was "adapted for use" if it were reasonably suitable for use as two or more tenements in the ordinary course of business. A lease comprising buildings of that character would be a multiple lease. Accordingly, this lease was such a lease. That being so, he had to consider whether he was satisfied under subs. (3) of s. 15 that having regard to the extent of the war damage it was equitable for the

defendants to disclaim. Under the section the burden was on the tenant of satisfying the court of this. The general background of the Act was to give relief to tenants and that the burden of the loss from war damage was to be the landlord's liability. Here it was equitable to allow the tenant to disclaim the whole and he made an order accordingly.

COUNSEL: *Roxburgh*, K.C., and *F. W. Wallace*; *Spens*, K.C., and *Pennycuick*.

SOLICITORS: *Huntley, Son & Phillips*; *Constant & Constant*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION.

Inland Revenue Commissioners *v.* Rolls Royce, Ltd.

Lawrence, J. 10th October, 1941.

Revenue—National Defence Contribution—Royalties from patents—Licence granted for benefit of patent-owner's business—Royalties not chargeable—Finance Act, 1937 (1 *Edw.* 8 & 1 *Geo.* 6, *c.* 54), *Sched. IV*, *para.* 7.

Case stated by the Commissioners for the Special Purposes of the Income Tax Acts.

Rolls Royce, Ltd., appealed against an assessment to national defence contribution for the accounting period the 1st April to the 31st December, 1937. The company's profit and loss account for 1937 showed receipts, *inter alia*, of £30,984 from royalties, and a substantial net profit. The royalties were received from High Duty Alloys, Ltd., in the following circumstances: Rolls Royce, Ltd., bought the metals which they required, but tested them in their own laboratories. Two of their metallurgists having discovered an aluminium alloy in 1927, the company were granted patents in respect of it and of later modifications of it. In 1930 the company granted High Duty licence to make and sell the alloy and modifications in the British Isles and Europe on payment of royalties specified. The company had no shares in or control over High Duty, but bought from them all the alloys in question which they needed. Royalties were payable by High Duty also on the alloy made for and sold to the company. The questions for decision were whether the £30,984 received as royalties should be included in the company's profits for the assessment of national defence contribution, and whether, if not, the deduction allowed to the company of the cost of the alloy should be reduced to the extent of the royalties received. It was contended for the company that the £30,984 should be excluded because it was income from an investment or other property within para. 7 of Sched. IV to the Finance Act, 1937, and that, as their business did not consist wholly or mainly in holding investments or other property, the £30,984 should not be included. The Crown contended that the royalties were business receipts and should be included, and if excluded should be taken in reduction of the deduction allowed for income-tax purposes of the cost of buying alloy. The commissioners held that the royalties should be excluded and should not be set off against the deduction allowed for the cost of the alloy. The Crown now appealed.

LAWRENCE, J., said that the Attorney-General distinguished *I.R.C.* v. *Gas Lighting Improvement Co., Ltd.* [1923] A.C. 723, and *Sangster* v. *I.R.C.* [1920] 1 K.B. 587, and relied on *I.R.C.* v. *Anglo-American Asphalte Co., Ltd.* (1941). The first case was much in favour of the company. Lord Cave there said of the corresponding provision relating to excess profits duty that it must refer to investments connected with the business, and that there was no reason why the exception should not include an investment of part of the business capital in an outside security although made in order to further the trading operations for which the business was set up, as had clearly been done there. That principle seemed applicable here. *Sangster's Case*, *supra*, was a clear authority that a patent was property and that a royalty payable under a licence was income from property. *I.R.C.* v. *Anglo-American Asphalte Co., Ltd.*, *supra*, was distinguishable because of the way in which the agreement there was framed. The royalties here fell within the exception for income from investments or other property, notwithstanding the intention of Rolls Royce, Ltd., in granting the patents to benefit their own business. On the second point, the Attorney-General said that *Westcombe* v. *Hadnock Quarries, Ltd.* (1933), 16 T.C. 137, was exactly in point. Counsel for the company relied on *Sinclair* v. *Cadbury*, 149 L.T. 412. In his (his lordship's) opinion the licence to use the patents was entirely separate and distinct from the purchase of the alloys. It would be inconsistent with *Sinclair* v. *Cadbury*, *supra*, to decide otherwise, because it would mean that the income from the patent while excluded by para. 7 would be brought in again by being used to reduce a permissible deduction. The appeal failed.

COUNSEL: *Sir Donald Somervell*, A.-G., and *R. P. Hills*; *Tucker*, K.C., and *Scrimgeour*.

SOLICITORS: *The Solicitor of Inland Revenue*; *Claremont, Haynes & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RAILWAY AND CANAL COMMISSION.

London Passenger Transport Board *v.* Middlesex County Valuation Committee and Others.

Wrottesley, J., Sir Francis Taylor and Sir Francis Dunnell.
16th September, 1941.

Rating and valuation—Transport undertaking—Power station supplying electricity to railways forming part of—Whether freight-transport or industrial hereditament—Rating and Valuation (Apportionment) Act, 1928 (18 & 19 *Geo.* 5, *c.* 44), *s.* 5 (1)—*London Passenger Transport Act*, 1933 (23 & 24 *Geo.* 5, *c.* 14), *ss.* 5 (4), 25 (1).

Appeal by the London Passenger Transport Board from a decision of the Railway Assessment Authority.

The authority, in the first London Passenger Transport valuation roll, classified the appellant board's Neasden power station as a freight-transport hereditament. The board claimed that it should have been classified as an industrial hereditament. The Middlesex Valuation Committee and the authority were respondents to the appeal. It was agreed that if the station was rightly classified as a freight-transport hereditament it could not, in view of s. 3 of the Rating and Valuation (Apportionment) Act, 1928, be an industrial hereditament. In whichever category the station fell its rateable value would be assessed as 25 per cent. of the net annual value, but if it were an industrial hereditament the benefit of the relief would enure to the board, whereas if it were a freight-transport hereditament that benefit would enure to the Freights Rebate Fund. The station had been classified as a freight-transport hereditament since the passing of the Act of 1928. By s. 5 (1) of that Act the expression "freight-transport hereditament" includes "(*a*) a hereditament occupied and used wholly or partly for railway transport purposes as part of (i) a railway undertaking carried on by a railway company, for which a schedule of standard charges has been settled under the Railways Act, 1921, or to which such a schedule is for the time being applied under s. 33 of that Act. . . ." The Neasden station supplied electricity to the former Metropolitan Railway, ultimately taken over by the board, and was agreed by the parties to be occupied and used wholly or partly for railway transport purposes as part of a railway undertaking carried on by a railway company. The board are, further, a railway company as defined by s. 85 of the Railways Act, 1921, as being owners of the Metropolitan Railway, for the definition includes "the owners of any railway to which at the passing of the Railways Act, 1921, a railways rates and charging order within the meaning of Part III of that Act applies." The Metropolitan Railway being such a railway, the Railway Rates Tribunal by an order made in December, 1927, applied to it the schedule of standard charges of the London and North-Eastern Railway Company, which schedule still applied to that railway when the London Passenger Transport Act, 1933, was passed. The board contended that they were not a railway company to which a schedule was for the time being applied under s. 33 of the Railways Act, 1921. Section 25 (1) of the London Passenger Transport Act, 1933, provided, in effect, that the schedule of charges which had been applied to the Metropolitan Railway should remain in force. By s. 5 (4) of the Act of 1933, the board, on the transfer of, *inter alia*, the Metropolitan Railway, were to be "subject to all liabilities and obligations . . . to which the undertakers were subject immediately before the appointed day . . . (iii) Provided that no . . . obligation to which the board is made subject, and no right . . . vested in the board, by virtue of this section by reason of the transfer to the board of any undertaking shall . . . extend to . . . any part of the undertaking of the board other than so much as represents the transferred undertaking." (*Cur. adv. vult.*)

WROTTESLEY, J., said that, although the effect of s. 25 (1) of the Act of 1933 was in terms to keep in force the schedule of charges which had been applied to the Metropolitan Railway, it also kept alive provisions relating to the fares and charges of the board's other railways contained in special Acts passed after the 14th August, 1939. Looking, however, at s. 25 (1) and the order of December, 1927, the court was of opinion that the board were a railway company to which a schedule of charges had been applied within s. 5 (1) of the Act of 1928, and that the power station was accordingly rightly included in the valuation roll as a freight-transport hereditament.

COUNSEL: *Comyns Carr*, K.C., *Tylor* and *Squibb*; *Craig Henderson*, K.C., *Turner*, K.C., and *Simes*; *H. B. Williams* (for the valuation committee).

SOLICITORS: *A. H. Grainger*; *Torr & Co.*; *C. W. Radcliffe*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

War Legislation.

STATUTORY RULES AND ORDERS, 1941 AND 1942.

E.P. 122. **Civil Defence** (Employment and Offences) (No. 2) Order, Jan. 22.
E.P. 178. Civil Defence (Employment and Offences) (No. 4) Order, Jan. 22.
E.P. 193. **Control of Cork** (No. 1) Order, Feb. 2.
E.P. 168. **Control of Paper** (No. 36) Order, 1941. Direction No. 5, Jan. 30.
E.P. 191. **Control of Rubber** (No. 5) Order, Feb. 2.
E.P. 192. Control of Rubber (No. 6) Order, Feb. 2.
E.P. 160. **Control of Timber** (No. 22) Order, Jan. 28.
No. 162. **Customs.** Import (Certificates of Origin and Interest) Order, Jan. 29.
E.P. 156. **Feeding Stuffs** (Rationing) Order, Jan. 28.
E.P. 176. Feeding Stuffs (Rationing) Order, 1942. Directions, Jan. 31.
No. 75. **Goods and Services** (Price Control). Utility Apparel (Maximum Prices and Charges) Order, Jan. 30.
E.P. 187. **Limitation of Supplies** (Miscellaneous) (No. 14) Order, Feb. 2.
No. 155. **Poisons** (Amendment) Rules, Jan. 13.
No. 154. **Price-Controlled Goods** (Invoices) Order, Jan. 30.
E.P. 188. **Public Utility Undertakings.** Authority, Jan. 28, *re* Gas Accounts.
No. 140. **Purchase Tax** (Exemptions) (No. 1) Order, Jan. 27.
E.P. 137. **Railway Companies** (Accounts and Returns) Order, Jan. 26.
E.P. 151. **Railways** (Charges for Government Traffic) Order, Jan. 28.
E.P. 175. **Tea** (Restriction on Dealings) Order, Jan. 31.
No. 26. **Unemployment Insurance** (Employment under Public or Local Authorities and Temporary Police Employment) (Exclusion) (Amendment) Regulations, Jan. 20